86-457

Supreme Court, U.S.
FILED
SEP 22 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 1986

WILLIAM B. RICHARDSON,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
Respondent

PETITION FOR A WRIT OF CERTIORARI

To the Superior Court of Pennsylvania

1336 PGH 1983

WILLIAM B. RICHARDSON, *pro se*
149 Westmoreland Avenue
Greensburg, Pa. 15601
(412) 837-3467

(a) THE QUESTIONS PRESENTED FOR REVIEW

1. Is due process and equal treatment denied when a pro se defendant litigates citations for local parking violations and the Magistrate curses him, admits being loud, and refuses to disqualify himself upon motion of defendant citing Ward v Monroeville, 409 US 57 ?

2. Is the unfairness of the Magistrate's trial rendered constitutionally acceptable by a trial de novo ordered by the Common Pleas Judge based on "failure to pay fine and costs" when this charge up-graded the offense and was not applicable and after the Common Pleas Judge denied defendant's written pre-trial motion to dismiss which cited unfair trial in the magistrate's court and Ward v Monroeville, 409 US 57 ?

(b) PARTIES TO THE PROCEEDING

All parties to this proceeding in the United States Supreme Court are contained in the Caption of this Petition.

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS	2
STATEMENT OF CASE	2
HOW FEDERAL QUESTION RAISED	3
ARGUMENT	4
CONCLUSION	6
APPENDIX	7

TABLE OF AUTHORITIES

CASES

Ward v Monroeville, 409 US 57 (1972).. 2, 3, 4, 6

CONSTITUTIONAL PROVISIONS

United States Constitution
Article III, section 2 2

United States Constitution
Amendment, Article XIV, section 1.. 2

(d) OPINIONS BELOW

This petition seeks to review a one and a half page MEMORANDUM of the Superior Court (A-1 & A-2); particularly, the paragraph which reads as follows:

"His argument that the district justice was not a disinterested magistrate is, even if meritorious, an inadequate reason for reversing the conviction. He appealed and was given a trial de novo before the Court of Common Pleas."

The case was reported at 345 Superior Ct. 621, under "Decisions Without Published Opinions."

The only other official Opinion was that of the Common Pleas Court (A-17 to A-23) which was dated August 25, 1983 (A-23). This opinion was also unpublished.

(e) JURISDICTION

The MEMORANDUM of the Superior Court dated April 26th, 1985, affirmed the Judgment of Sentence of the Common Pleas Judge. Reargument in Superior Court was denied. See certification of petitioner (A-2 & A-3).

Petition for Allowance of Appeal to Supreme Court of Pennsylvania denied February 27th, 1986 (A-3).

Petition for Reconsideration of Allowance of Appeal to Supreme Court of Pennsylvania denied June 30, 1986. (A-5)

Order approved by Mr. Justice BRENNAN extending time to file Petition for Writ of Certiorari issued August 27th, 1986. (A-9)

Jurisdiction in the Supreme Court of the UNITED STATES is conferred by Title 28 USC section 1257(3).

(f) CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVE

ARTICLE III, Section 2: The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, _ _ _.

Amendment to Constitution, ARTICLE XIV, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(g) STATEMENT OF CASE

On November 5th, 1982, a hearing was held before a Westmoreland County, Pa. Magistrate based on citations which allegedly confirmed tickets previously given for parking violations based on ordinances of the City of Greensburg. Shortly before the hearing, the Magistrate became openly hostile towards the defendant (A-12). During this outbreak, the Magistrate told the defendant to "go to hell". (A-12) Personal hostility towards the defendant was further demonstrated during the hearing. (A-11) The Magistrate admitted being loud (A-11). The defendant attempted to cite Ward v Monroeville, 409 US 57 (A-13). The defendant was referred to the President Judge of the Common Pleas Court (A-13). The Magistrate refused to listen to the reading of Standard of Conduct for Justice of the Peace from the Pennsylvania Rules of Procedure (A-11). At the end of hearing, the petitioner renewed his motion that the Magistrate was without jurisdiction to hear the case because he was not neutral nor detached (A-14 & A-15). A further motion was made to move the case to another Magistrate (A-15) Again, the petitioner was referred to the President Judge.

Upon appeal to the Common Pleas Judge, the defendant again cited Ward v Monroeville and the lack of appearance of Justice based on the Magistrate's conduct and this was put in a written Motion filed on time before the appeal hearing date. The motion asked that the case be dismissed. The Common Pleas Judge made it clear that the petitioner was going to be tried for "failure to Pay Fine and Costs" which is a statutory offense in Pennsylvania. The Common Pleas Judge so held (A-18). Fines and Costs had never been previously imposed (A-15 & A-16). This raised the question whether the petitioner was given a trial de novo, in actuality. On appeal, the petitioner argued that this phenomenon translated into prejudice on the part of the Common Pleas Judge (A-2). At any rate - for purposes of the Writ of Certiorari - it would taint the trial de novo from its inception.

(h) HOW FEDERAL QUESTION RAISED IN STATE COURT

The petitioner (defendant below) raised the question of disqualification and recusal before the Magistrate in the early stages of the hearing in his Court on November 5th, 1982, (A-10 & A-11). He again raised these same issues at the end of the testimony before the Magistrate (A-15).

A written Motion that the case be dismissed based on Ward v Monroeville was filed in the Common Pleas Court. See opinion of Common Pleas Judge (A-17, A-18, A-19, A-20 & A-21). The Judge's Opinion does not mention the Ward v Monroeville case set out in the written motion and argued openly in his court.

The petitioner preserved the contentions in the Motion to Dismiss by including them in the Post Conviction Motion and then briefed the general contention of unfair trial for lack

of neutral and detached Judge in both the Common Pleas Court, the Superior Court, and in the attempt to get allowance of appeal to the Supreme Court of Pennsylvania. A reference to Superior Court's MEMORANDUM acknowledges this (A-2). The petitioner also argued that the trial de novo ordered by Judge did not cure the unfairness at the Magistrate's level.

Throughout this case, the petitioner has maintained the Ward v Monroeville argument that a neutral and detached judge is mandatory and that justice must satisfy the appearance of justice and that it is not constitutionally acceptable for the Commonwealth to be allowed a second chance to see if it has a judge who can control himself or whose personal animosities towards the defendant can be subdued (A-7).

(j) ARGUMENT

The Court Reporter transcript of the Magistrate's hearing reflects a personal bias towards the defendant (A-10 thru A-16). It also reflects a belligerent refusal of the Magistrate to Disqualify himself (A-11, A-15 & A-16). Although such lack of neutrality and detachment originates in the mind of the Judge and is manifested by his demeanor, it is just as devastating to Justice as inconsistent responsibilities for revenue production that may underwrite a Judge's decision on fines and costs. In fact, such Judge to defendant personal animosity precipitating bias and prejudice invokes the equal treatment provision of Amendment 14.

The Pennsylvania Rules of Criminal Procedure for 1982 allowing appeal from District Justice (Magistrate) Courts to the Courts of Common Pleas, provide for a trial de novo "as the President Judge shall direct." In this case the Common Pleas Judge ordered the trial

de novo - not the President Judge - and the Common Pleas Judge based the trial de novo on "Failure to Pay Fine and Costs." A de novo trial comprehends only those charges appearing in the original citations. This argument was made on appeal to the Superior Court under the heading : "Was the Court below without Subject Matter Jurisdiction?" This contention was not addressed in the Superior Court's MEMORANDUM except by the statement: "The Court of Common Pleas clearly had subject matter jurisdiction to hear the appeal." (A-2)

CONCLUSION

The Writ of Certiorari should issue to the Superior Court of Pennsylvania in its case No. 1336 Pittsburgh 1983 (Commonwealth of PA. vs William B. Richardson) and:

Question No. 1 of the Questions Presented for Review should be resolved consistent with the denial of due process holding in Ward v Monroeville because of lack of neutrality and detachment in the judicial officer.

Question No. 2 of the Questions presented for Review should be resolved consistent with the holding that an accused is entitled to a neutral and detached judge in the first instance and failure of the Commonwealth to so provide is not constitutionally acceptable merely because the case was tried de novo in a higher state court.

Respectfully submitted,

William B. Richardson

William B. Richardson, pro se
149 Westmoreland Avenue
Greensburg, PA 15601
(412)837-3467

APPENDIX

ORDER and MEMORANDUM, Superior Court April 26th, 1985 A-1

CERTIFICATION that Application for Reargument was made and denied A-2

Letter dated February 27, 1986 Denying Petition for Allowance of Appeal to Supreme Court of Pennsylvania A-3

ORDER of Common Pleas Judge for payment Fines and Costs, dated March 4th, 1986 A-4

Letter dated June 30, 1986, Denying Petition for Reconsideration to Supreme Court of Pennsylvania A-5

ORDER of Common Pleas Judge for payment Fines and Costs, dated July 8th, 1986 A-6

ORDER of Westmoreland County President Judge Appointing Motions Judge to replace Trial Judge to hear Petition to Determine Indigency and/or Petition to Order Contempt of Court. A-7

ORDER of Motions Judge setting hearing for August 6th, 1986 on District Attorney's Petition A-8

CERTIFICATION that Motion's Judge's orders commanding payment to Clerk or face contempt hearing on September 25th, 1986, have been misplaced. A-8

ORDER extending time to file in Supreme Court of United States by Justice Brennan dated August 27th, 1986.

EXTRACTS from Transcript of Magistrate's Hrg, 11/5/82 A-10

OPINION of Common Pleas Judge, Aug 25, 1983 A-17

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1336 Pittsburgh, 1983
	:	
WILLIAM B. RICHARDSON, Appellant	:	

ORDER

AND NOW, this 26th day of April, 1985, it is ordered as follows:

Judgment of Sentence affirmed.

Appeal from the Judgment of Sentence of the Court of Common Pleas, Westmoreland County, Criminal Division, at No. 1697 C 1982.

BEFORE: BROSKY, WIEAND AND LEDERER*, JJ.

PER CURIAM:

*Honorable William J. Lederer, Senior Judge, of the Court of Common Pleas of Philadelphia County, Pennsylv, is sitting by designation.

MEMORANDUM:

William Richardson, Esquire, upon appeal from a decision of the magistrate's court in Greensburg, was tried de novo on two parking violations after he had failed to pay fines for illegal parking. Post trial motions were denied and he was ordered to pay fines and costs of $36.12.

His argument that the district justice was not a disinterested magistrate is, even if meritorious, an inadequate reason for reversing the conviction. He appealed and was given a trial de novo before the Court of Common Pleas.

The Court of Common Pleas clearly had subject matter jurisdiction to hear the appeal. Moreover, appellant was not placed twice in jeopardy for the same offense by the trial in the Court of Common Pleas. It was his appeal that took the case to the Court of Common Pleas.

Appellant's argument that the trial judge was prejudiced was not raised in post trial motions and has been waived.

The judgment of sentence is affirmed.

-End of Superior Court Memorandum-

CERTIFICATION

This will certify that the petitioner made timely application for reargument to the Superior Court which was denied without comment. Further, that following denial by the Superior Court, the petitioner made timely application to the Supreme Court of Pennsylvania for

allowance of appeal.

I hereby Certify, Sept 14, 1986.

William B. Richardson

SUPREME COURT OF PENNSYLVANIA

Western District
801 City-County Bldg
Pittsburgh, Pa
(412) 565-2816

February 27, 1986

Mr. William B. Richardson
149 Westmoreland Avenue
Greensburg, Pa 15601

In Re: Commonwealth of Pennsylvania v William B. Richardson
No. 505 W. D. Allocatur Docket 1985

Dear Mr. Richardson:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above-captioned matter:

"Per Curiam
Denied
2/24/86"

Very truly yours,

Irma T. Gardner
Deputy Prothonotary

ITG/dad
cc : Alfred B. Bell, Esq
Honorable Charles H. Loughran

IN THE COURT OF COMMON PLEAS, WESTMORELAND COUNTY
CRIMINAL DIVISION

COMMONWEALTH OF PA)
)
vs) No. 1697 C 1982
)
WILLIAM B. RICHARDSON)

ORDER OF COURT

AND NOW, to-wit, this 4th day of March, 1985, it appearing to the Court that the Pennsylvania Supreme Court by Order dated February 24, 1986, has denied the above-captioned defendant's Petition for Allowance of Appeal in the above-captioned matter. It is hereby ORDERED, ADJUDGED, and DECREED that the above-captioned defendant shall comply with the sentence imposed by this Court on October 19, 1983, and that the actor is hereby given 5 days to pay the fines and costs of prosecution as per the sentence of this Court.

BY THE COURT:

_____
Charles H. Loughran, Judge

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

June 30, 1986

Mr. William B. Richardson
149 Westmoreland Avenue
Greensburg, Pa 15601

In Re: Commonwealth of Pennsylvania v. William B. Richardson
No. 505 W. D. Allocatur Docket 1985

Dear Mr. Richardson:

The Court has entered the following Order on your Petition for Reconsideration in the above-captioned matter:

"Per Curiam
Denied
6/26/86"

Very truly yours,

Irma T. Gardner
Deputy Prothonotary

cc: John Driscoll, Esquire
District Atty

Honorable Charles H. Loughran

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY

COMMONWEALTH OF PENNSYLVANIA	)	
	)	
vs	)	No. 1697 C 1982
	)	
WILLIAM B. RICHARDSON	)	

ORDER OF COURT

AND NOW, to-wit, this 8th day of July, 1986, it appearing to the Court that the Pennsylvania Supreme Court by Order dated June 30, 1986, has denied the the above captioned defendant's Petition for Reconsideration; it is hereby ORDERED, ADJUDGED, and DECREED that the above-captioned defendant shall comply with the sentence imposed by this Court on October 19, 1983, and that the actor is hereby given five (5) days to pay the fines and costs of prosecution as per the sentence of this Court.

BY THE COURT:

CHarles H. Loughran, Judge

BEST AVAILAB

IN THE COURT OF COMMON PLEAS OF WESTMORELAND

COMMONWEALTH OF PENNSYLVANIA)
)
vs) No. 1697 C 1982
)
WILLIAM B. RICHARDSON, def)
)

ORDER OF COURT

AND NOW, to-wit, this 29th day of July, 1986, upon consideration of the Motion to Appoint Neutral and Detached Judge, presented by the above defendant in this case on behalf of the defendant, William B. Richardson, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion Judge, Hon. Gary P. Caruso, is assigned to hear only the Petition to Determine Indigency and/or Petition to Order Contempt of Court. The hearing before the Honorable Gary P. Caruso, J., is limited to the issue involved in the aforementioned petition.

BY THE COURT:

_____ P. J.
Gilfert M. Mihalich, President Judge

cc: Hon. Gary P. Caruso, Judge
Hon. Charles H. Loughran, Judge
Mr. William B. Richardson
District Attorney's Office

BLE COPY

IN THE COMMON PLEAS COURT OF WESTMORELAND COUNTY

(usual heading)) No. 1697 C 1982

ORDER OF COURT

AND NOW, to-wit, this 30th day of July, 1986, it appearing to the Court that this Court has been appointed by President Judge Gilfert M. Mihalich to take testimony on the Commonwealth's Petition to Determine Indigency and/or Petition for Contempt of Court. It is hereby ORDERED, ADJUDGED, and DECREED that said hearing should be set for the 6th day of August, 1986, at 9:30 AM.

BY THE COURT:

Gary P. Caruso, Judge

CERTIFICATION

This is to certify that on the 6th day of August, 1986, the honorable Gary P. Caruso ordered the petitioner to pay costs as carried on the Clerk of Court's bill or face contempt of court hearing which is now set for September 25th, 1986. Petitioner further certifies that he has been unable to locate these Orders and he is pressed for time and desires to proceed without their reproduction.

SUPREME COURT OF THE UNITED STATES

No. A-149

WILLIAM B. RICHARDSON,
Applicant,

v.

PENNSYLVANIA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including September 24, 1986.

/s/ William J. Brennan, Jr

Associate Justice of the Supreme Court of the United States

Dated this 27th day of August, 1986.

Extract from Transcript of Magistrate's Hearing, 11/5/82

police on September the second, more than five days after the alleged offense. It was issued by the District Justice on September the eighth, and it was - - -

THE COURT: Are you testifying, or are you making a Motion?

MR. RICHARDSON: I'm showing what I asked you to read about the citations.

THE COURT: I read what you handed me prior to this.

MR. RICHARDSON: Will you make that a part of the record?

THE COURT: She has it on the record there. Your motion is denied.

MR. RICHARDSON: Then I'd like to make another motion. I'm entitled to have a hearing before a neutral and detached magistrate.

THE COURT: Before a what?

MR. RICHARDSON: A neutral and detached magistrate, and I think, sir, that your behavior this afternoon - -

THE COURT: Now let's not get into behaviors. You're getting out of line. What's that have to do with this

(petitioner's note: above is page # 5 complete from transcript)

Extract from Transcript of Magistrate's Hearing, 11/5/82

case? Your behavior is completely out of line, put that on the record; okay? You're acting like a "horse's ass."

Now, let's get on with the case. If you want a hearing, you ask the courts for change of venue if you feel I'm unfair, and the President Judge has jurisdiction over that.

Now we're not going to sit here all afternoon and hear you ranting and raving.

MR. RICHARDSON: Your Honor, I have not raised my voice.

THE COURT : Well, I am.

MR. RICHARDSON: Now, Rule 4 of the Justice - - Standard of Conduct for Justices of the Peace says that a justice of the peace shall be faithful - -

THE COURT : Mr. Richardson, you take that up - - you don't expect me to rule against myself; do you? You take that up with the Judicial Review Board; you take that up with the President Judge; you take it up with whoever you doggone well feel like; all right?

(petitioner's note: above is page # 6 complete from transcript)

Extract from Transcript of Magistrate's hearing, 11/5/82

Now, let's get on with the hearing. Do you have any other motions pertaining to this hearing ?

MR. RICHARDSON: I'd like to ask His Honor if he didn't tell me to go to hell this afternoon.

THE COURT: This morning I did, and I also would ike to enter into the record the reason: Because you gave my girls a bad time. You insisted on us hiring a court reporter for you. You told me that my girls were not very courteous to you because they wouldn't give you their names. They have strict orders from me not to give out their names. Is that correct, Mr. Richardson?

MR. RICHARDSON: I'm representing myself here, and I'm not answering any questions.

THE COURT : All right, let's get on.

MR. RICHARDSON: I deny that I was discourteous, I'll say that, and you're taking the statement of the girl. Who was the girl ?

(petitioner's note: above is page # 7 complete from transcript)

Extract from Transcript of Magistrate's Hearing, 11/5/82

THE COURT : None of your business. Are you ready to testify, Officer Waugaman?

Lt. WAUGAMAN: I'm ready.

MR. RICHARDSON: Before we start, I'd just like to make one citation, Ward against Monroeville, 409 US 57.

THE COURT : That motion is denied.

MR. RICHARDSON: It says I'm entitled to a neutral and detached judge.

THE COURT : Fine. You see the President Judge. The fact that you haven't posted a bond or done anything, you asked for a hearing.

MR. RICHARDSON: You don't have any jurisdiction, Your Honor.

THE COURT : All right, fine. You take an appeal if you lose. If you win, allright, you don't take an appeal.

Lt. Waugaman, go ahead.

LT. WAUGAMAN: Okay. On 9/2/82, I wrote a citation for unlawful parking, okay, for failure to pay two parking tickets that were issued on 8/17/82

(petitioner's note: above is page # 8 complete from transcript)

for parking under that violation.

Q Then, you can't say whether my flashing lights were there or not?

A It's immaterial, really.

Q You don't know how long the car had been there; do you?

A I don't have the slightest idea.

Q And you don't know how long it was there after you left?

A No.

Q And Pennsylvania Avenue is a one-way street?

A Yes.

Q There is parking meterson on the right-hand side; correct?

A Right.

OFFICER CAVANAUG: What bearing does this have on the citation, Judge ?

THE COURT: None. Let's get to the point, you know.

MR. RICHARDSON: Your Honor, I'm going to renew my motion that you don't have any jurisdiction in this case, and I'm going to say that I should be

(petitioner's note: above is page # 31 complete from transcript)

Extract from Transcript of Magistrate's Hearing, 11/5/82

entitled to a neutral and detached Judge in this case.

I move this Court to direct this case to another magistrate. I think you behavior has indicated - - -

THE COURT: Now let's not get personal. Your motion is denied.

MR. RICHARDSON: I'm not trying to get personal.

THE COURT : I instructed you what you could do. You go to the President Judge, and you ask for a change of venue. You should have done that before this.

However, I am denying your motion. Do you wish to offer any testimony ? You wern't sworn in. Do you wish to offer any testimony ?

MR. RICHARDSON : I will not offer any testimony.

THE COURT : I would find aginst you, Mr. Richardson, in both cases. The total fines and costs are $41.12. You do have a right of appeal. I will give you one week to pay them. If they're not paid - - I'll retract that.

(petitioner's note: above is page # 32 complete from transcript)

Extract from Transcript of Magistrate's Hearing, 11/5/82

I'll give you the time you have to appeal. If they're not paid or an appeal taken, I will issue a warrant for your arrest.

Is there any question?

MR. RICHARDSON: Yes. Who was the police officer that was in there this afternoon when you bawled me out verbally ?

THE COURT: That was not a police officer, it was a constable.

MR. RICHARDSON: What was his name ?

THE COURT : I don't know.

(Whereupon, the hearing was adjourned on the fifth day of November, 1982, 3:11 p. m.).

(petitioner's note: above is page # 33 complete from transcript)

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY

(USUAL HEADING) No. 1697 C 1982

BEFORE : Charles H. Loughran, J.

HEARD : April 25, 1983

O P I N I O N

BY THE COURT : (Opinion by Loughran, J)

The instant case involves appeals from summary convictions upon two parking citations issued by officers of the City of Greensburg to William B. Richardson. Upon convictions before Michael G. Moschetti of Magisterial District No. 10-02-10 on November 5, 1982 the defendant filed an appeal on November 29, 1982. Thereafter, on February 23, 1983 the defendant filed a Motion to dismiss alleging that he was not tried before a neutral and detached magistrate and accordingly should have his case dismissed. On February 25, 1983 the defendant filed an "Application for Judgment Non Pros for failure to File Transcript and other Papers as Required by Rule 67(c), Rules of Criminal Procedure." In this application the defendant requests a non pros as the transcript of the magistrate did not contain

testimony nor address the questions of "jurisdiction", "time barred" and defective citations.

On February 28, 1983, the defendant argued his motion and application and a de novo hearing was held. The defendant's motion and application was denied and defendant was found guilty of not paying fines and costs as imposed. Thereafter, on March 10, 1983 defendant filed a Post-Verdict Motion in Arrest of Judgment requesting a re-hearing and an application for judgment non pros. The main basis of defendant's motion is the courts denial of his earlier motion and application containing the reason cited therein.

On April 14, 1983 the defendant filed a motion requesting that the trial Judge, Judge Loughran, disqualify himself from further consideration of this case. This request for disqualification never came to this Judge's attention before or during the trial and was only made after the verdict was rendered against the defendant. On April 18, 1983 after reviewing the entire record of the proceedings before this Judge an order of court was entered denying the defendant's motion to recuse himself.

On May 18,1983 this court received from the defendant a notice of appeal that the defendant had on that date appealed to the Superior Court of Pennsylvania from the order of April 18, 1983 whereby Judge Loughran refused to recuse himself. The Commonwealth in response to the appeal filed a Motion to Quash the same on the basis that this order was interlocutory in nature and not appealable. On August 1, 1983 the Superior Court of Pennsylvania quashed the appeal agreeing with the Commonwealth's interpretation that the order was interlocutory. This interim appeal has caused a time delay in filing this opinion.

The brief in support of the defendant's post-verdict motion does not pursue the denial of the motion for Judge Loughran to recuse himself nor do the post-verdict motions and hence this court sitting in the posture of a Court En Banc assumes that this issue has been waived and will not address the same. In any event the record of the proceedings before this Judge speak for themself in this regard.

The defendants earlier motion to dismiss is based

upon his contention that he did not initially receive a hearing before a neutral and detached magistrate and that the right to a "de novo" hearing does not correct this. Defendant maintains that this is a substantive right and if violated must be treated similar to substantive rights under the old writ of certiorari procedure abolished by Rule 67(g) of the Pennsylvania Rules of Criminal Procedure and requires dismissal of the charges. The defendant cites Commonwealth v Ristau, 68 D & C 337/(1974) and Commonwealth vs Detsch 74 D & C 2d 555(1975) for the proposition that substantive rights can be and are raised at a de novo hearing.

Here, the court reviews the transcript, found that the magistrate was neutral and detached and also granted the defendant a hearing on the merits. All of the defendant's rights were protected and were granted as asserted and requested by defendant as the same pertains to defendant's motion. The defendant it appears wants this court to hold that because he believes the magistrate not to be impartial a dismissal is required. After a review of the magistrate transcript and the record of testimony in the magistrate court, it is found that the magistrate's decision was

based upon the evidence and the defendant did receive an impartial hearing.

Further, after a de novo hearing it is found that the procedures mandated by Rule 51(2) were followed.

The defendant's original application for judgment non pros was based primarily upon the failure of the hearing magistrate to include with his transcript the recorded testimony of the magistrate's hearing. A review of the record, however, reveals not only was the testimony transcript in the possession of the defendant, but the same was presented to the court and further the defendant did not apply for a rule to show cause as provided by Rule 67(f). Accordingly, the assertions of the defendant upon this basis are without merit.

The remaining matters set forth in defendants post-verdict motion are addressed to the citations issued. The citations were processed in accordance with Rule 51(2) and summons were issued in conformity with Rule 54(d). The proper procedures having been followed the defendant's assertions are found to be with no merit.

The defendant contends that the citations fail to meet the requirements of Rule 54(a) and (b)

in that the officers return is required to be made within five days of arrest. The citations were served on September 9, 1982 and September 29, 1982 and the returns were made on September 9, 1982 and September 29, 1982 respectively. The five day requirement is met. The defendant is confusing the time of issuance of the parking ticket with the date of service of the citation. It is not the parking ticket that compels the return but the service of the citation.

The defendant lastly contends that insertion of "Prima Facie" in the citation form at the place set forth for the defendant violates Rule 52. The Commonwealth asserts that this is permitted by 42 Pa C.S.A. 6143 which creates an inference that the owner was the operator of the vehicle. We believe this position to be sound. As no one observed the defendant operating the vehicle, in parking violations, it is inferred that the owner is the operator.

The identify of the defendant is by inference the owner. The citations clearly set forth the name and address of the owner and accordingly satisfies the requirements in parking violation cases when the operator is absent to hold otherwise would render the procedures associated with parking violations useless.

This owner may at hearing accordingly rebut the presumptions by testifying that he was not the operator and dismissal would occur in accordance with 42 Pa. C.S.A. 6143(b). Not only was this not done, the defendant admits driving the vehicle. Therefore, the citations should stand.

Accordingly, no merit having been shown to defendant's post-verdict motion, the same should be denied and the following order is issued:

(Usual Caption & Heading)

ORDER OF COURT

AND NOW, to-wit, this 25th day of August, 1983, the defendant's post-verdict motions in Arrest of Judgment and Application for Judgment Non Pros are denied and the verdict is affirmed, and the defendant, William B. Richardson, is directed to appear on Monday, September 19, 1983 at 11:45 a. m. for sentencing.

BY THE COURT:

_____ J

ATTEST: Charles H. Loughran, Judge

_____

Clerk of Courts

CONCLUSION

The Writ of Certiorari should issue to the Superior Court of Pennsylvania in its case No. 1336 Pittsburgh 1983 (Commonwealth of Pa. vs William B. Richardson) and :

Question No. 1 of the Questions Presented for Review should be resolved consistent with the denial of due process holding in Ward v Monroeville because of lack of neutrality and detachment in the judicial officer.

Question No. 2 of the Questions presented for Review should be resolved consistent with the holding that an accused is entitled to a neutral and detached judge in the first instance and failure of the Commonwealth to so provide is not constitutionally acceptable merely because the case was tried de novo in a higher state court.

Respectfully submitted,

William B. Richardson, pro se
149 Westmoreland Avenue
Greensburg, PA 15601
(412) 837-3467